IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1003 of 1986

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

VAGHARI KALU AMTHU

Appearance:

1. Criminal Appeal No. 1003 of 1986

MR AJ DESAI APP for Petitioner No. 1

MR DM BHARATI for Respondent No. 1 (Absent)

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 29/01/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. The appellant-State of Gujarat has filed this appeal against the impugned judgment and order of acquittal dated 26.5.1986 passed by the learned Sessions Judge, Bhavnagar in Sessions Case No.82 of 1985 whereby the learned Judge acquitted the respondent-accused for the offence u/S.302 of the IPC and u/S.135 of Bombay Police Act.

#. As per the prosecution case, the incident in question took place in early morning between 2.00 to 3.00 a.m. on 14.4.1985 at Vaghrivas, Tilaknagar area of Bhavnagar. The respondent-accused committed murder of deceased-Khodu Magha by giving knife blows. The entire prosecution case hangs on solitary eye witness-complainant-Purshottam Laghra, PW.2 Ex.8, who had lodged FIR at Ex.9 about the incident. The learned Judge discussed his evidence in para 5 of his judgment. Before the court complainant-Purshottam Laghra Ex.8 stated in his evidence that on the previous day of the incident accused came to the deceased and asked for the job. At that time deceased told the accused that he was a bad man and going away after taking money and not doing any work, therefore, he was not prepared to keep him on job. At that time, accused gave threat to the deceased to see him. Thereafter, in the night at about 10.30 p.m. the accused and deceased were exchanging the words near the house of the deceased. Thereafter, the accused left the place. In the late night, after hearing shouts "save save" he went to the place of incident, which is nearby his house. He saw one person running away from the place of the incident. When he went near the deceased he (deceased) told him that accused-Vaghari Kalu Mathu ran away after giving knife blows to him. Thereupon immediately he informed about the incident to Shri Dehubhai, leader of his caste, who told him to lodge complaint, therefore, he went to the police station and lodged complaint Ex.9.

In his cross-examination he admitted that the deceased gave name of the respondent-accused as assailant on the contrary he had stated in his complaint that when he went to the place of incident he saw deceased lying on the ground and he was not able to speak anything and blood was coming out of his body. He also admitted that he had not stated in the complaint about the exchange of words taking place between the deceased and the accused near the house of the deceased at 10.30 p.m. on the previous night of the incident. He further admitted in

his cross examination that he and deceased both were sleeping outside and when he was in sound sleep, the incident in question took place in dark night. He had seen the person jumping the fence near his house. However, he admitted that there was a distance of about 50 ft. from the fence and his house. He also admitted that till he went near the deceased and asked, he could not identify the person, who jumped the fence and ran away.

#. In view of his admissions made in his cross-examination, the learned Judge refused to place reliance on his evidence and rightly so. Except the evidence of Purshottambhai there is no other evidence to connect the respondent-accused with the guilt of the offence. Recovery of weapon (knife) alleged to have been

used by the accused at the time of the offence is also not proved. Panch-Dahyabhai Punambhai has also not supported the prosecution case. Witness-Chiman Popat, brother-in-law of the accused, from whose place knife was recovered also not supported the prosecution.

#. From the judgment of the learned Judge, it clearly appears that the learned Judge gave benefit of doubt to the accused because of faulty investigation. We fully agree with the reasons assigned by him in para 6 of his judgment for acquitting the accused. When the complainant informed about the incident then, it was the duty of the police to immediately lodge the FIR and start investigation. Instead of that the complainant was asked to go to the police station. It is clear from the evidence of the complainant that complaint was reduced in writing at Bordigate Police Chowki by Jamadar, whereas the I.O. stated in his evidence that he recorded complaint at Ex.9. in "B" Division Police Station. Looking to the admissions made by the complainant in his cross-examination that he had neither seen the actual incident nor the assailant. Except him there is no other witness to the incident. Thus, it cannot be said that the learned Judge committed any error in acquitting the accused, which calls for the interference by this court in an acquittal appeal.

#. In view of the above discussion, this appeal fails

and is hereby dismissed. Bail bonds of the respondent-accused stands cancelled.

(B.J.Shethna, J.)

(J.R.Vora, J.)

*Pvv